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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/535,505	05/18/2005	Jonathan Stagnetto	13408/1	9378

23838 7590 09/19/2006

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WASHINGTON, DC 20005

EXAMINER

LHYMN, EUGENE

ART UNIT	PAPER NUMBER
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3727

DATE MAILED: 09/19/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/535,505

Applicant(s)

STAGNETTO, JONATHAN

Examiner

Eugene Lhymn

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 9-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 9-19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 18 May 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

### **DETAILED ACTION**

The Office Action sent 3/13/2006 is hereby withdrawn. Enclosed is the new Office Action treating the proper claims. The claims examined in the OA sent 3/13/2006 were the cancelled claims 1-8 (see APE 5/18/2005). The newly submitted claims 9-19 are considered below. A new six-month statutory date is granted as a result.

#### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 9-19 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Specifically, regarding claim 19, it is unclear exactly what "superior" entails. Appropriate correction is required.
3. Claim 10 recites the limitation "the lower" and "the upper." There is insufficient antecedent basis for this limitation in the claim.

#### ***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 9-11, 15-16 are rejected under 35 U.S.C. 102(b) as being anticipated by Ricobene et al. (US Re. 29415). With respect to claim 9, Ricobene et al. discloses the following:

- First portion comprising a bottom, side, cover element (Fig. 2 & 3)
- Side elements comprising plurality of rigid, stackable intermediate elements having open upper portions and openwork bottoms (Fig.'s 2 & 3)
- Cover element including connection means for providing a seal (Fig. 5)
- Second portion being integrated with bottom element for controlling gas flow (Fig. 2, item 34a)

With respect to claim 10, Ricobene et al. discloses the connection means comprising an open groove and circumference insert (Fig. 5).

With respect to claim 11, Ricobene et al. discloses the groove comprising a seal (Col. 2, Lines 60-65).

With respect to claim 15, Ricobene discloses the elements being rectangular (Fig. 1).

With respect to claim 16, Ricobene discloses the use of cardboard or plastic (Col 1).

***Allowable Subject Matter***

6. Claims 12-14, 17-19 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

***Conclusion***

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Sterett (US 5197601)

Von Holdt, Jr. (US 2001/0047994 A1)

Rush et al. (US 5791509)

Carter (US 5582297)

Jahnen et al. (US 4703857)

Cheeseman (US 6394274 B1)

Machado et al. (US 2004/0188507 A1)

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eugene Lhymn whose telephone number is 571-272-8712. The examiner can normally be reached on MTWT 6-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Newhouse can be reached on (571)272-4544. The fax phone

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number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
NATHAN J. NEWHOUSE  
SUPERVISORY PATENT EXAMINER